

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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REBECCA J.,  
*Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY,  
*Appellee.*

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I.A., R.R., AND S.R.,  
*Appellants,*

*v.*

DEPARTMENT OF CHILD SAFETY,  
*Appellee.*

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Nos. 2 CA-JV 2018-0127 and 2 CA-JV 2018-0132 (Consolidated)  
Filed December 11, 2018

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);  
Ariz. R. P. Juv. Ct. 103(G).

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Appeal from the Superior Court in Pima County  
No. JD20170583  
The Honorable Joan Wagener, Judge

**AFFIRMED**

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COUNSEL

Joel Feinman, Pima County Public Defender  
By David J. Euchner, Assistant Public Defender, Tucson  
*Counsel for Appellant Rebecca J.*

Office of Children's Counsel, Tucson  
By Sybil Clarke  
*Counsel for Minors*

Mark Brnovich, Arizona Attorney General  
By Cathleen E. Fuller, Assistant Attorney General, Tucson  
*Counsel for Appellee Department of Child Safety*

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Brearcliffe concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Rebecca J. and her children I.A., R.R., and S.R. appeal from the juvenile court's order, after a contested hearing, adjudicating the children dependent as to Rebecca. They argue the court "erred as a matter of law and abused its discretion" because it "focused on the past abuse and neglect and not on the present mitigation of those circumstances." We affirm the court's ruling.

¶2 Relevant to this appeal, a dependent child is one "whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent," A.R.S. § 8-201(15)(a)(iii), and neglect is defined as "[t]he inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare," § 8-201(25)(a). "A child may be dependent when the parent is unwilling or unable to protect the child from abuse." *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, ¶ 14 (App. 2016); see also *In re Pima Cty. Juv. Action No. J-77188*, 139 Ariz. 389, 392 (App. 1983) ("Effective parental

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care clearly implies prevention of sexual as well as other physical abuse.”); *In re Pima Cty. Juv. Action No. 96290*, 162 Ariz. 601, 605 (App. 1990) (“A finding of dependency may be predicated on one parent’s failure to prevent abuse by another parent.”).

¶3 A court “must determine whether a child is dependent based upon the circumstances existing at the time of the adjudication hearing.” *Shella H.*, 239 Ariz. 47, ¶ 12. But abuse or neglect “need not be continuous or actively occurring at the time of the adjudication hearing to support a finding of dependency on these grounds; the substantiated and unresolved threat” of abuse or neglect “is sufficient.”<sup>1</sup> *Id.* ¶ 16.

¶4 A determination of dependency requires proof by a preponderance of the evidence. A.R.S. § 8-844(C)(l). We review a dependency adjudication for an abuse of discretion, deferring to the juvenile court’s ability to weigh and analyze the evidence. *Louis C. v. Dep’t of Child Safety*, 237 Ariz. 484, ¶ 12 (App. 2015). Thus, “we view the evidence in the light most favorable to sustaining the juvenile court’s findings.” *Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21 (App. 2005).

¶5 As detailed in the juvenile court’s extensive under-advisement ruling after a contested hearing, the Department of Child Safety (DCS) took temporary custody of the children in November 2017 and filed a dependency petition alleging that Juan R., the father of R.R. and S.R., had sexually abused I.A. and that Rebecca was unable or unwilling to protect the children. According to the preliminary protective hearing report filed by DCS, the agency first became involved with the family in July 2017, after then-fifteen-year-old I.A. disclosed that Juan had been sexually abusing her since she was twelve years old. Rebecca initially obtained an order of protection against Juan, but she had it quashed in August, and, in September, she told a police detective that I.A. had recanted her accusations, and she pressured I.A. to agree to that recantation.<sup>2</sup> Also in September, Rebecca agreed to an “after-care plan” with DCS, which

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<sup>1</sup>We thus cannot agree with Rebecca and the children that *Shella H.* stands for the proposition that a dependency does not exist unless “the children are currently suffering neglect or abuse.”

<sup>2</sup>According to a police report, I.A. later told a detective that Rebecca had “made her feel ‘guilty[.]’ . . . about putting Juan in jail and [his] not being able to support the family” and, with respect to the recantation, she “stated her mom had told her ‘do this for me.’”

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required that she prohibit Juan's unsupervised contact with the children until he participated in services.

¶6 In October, after I.A. had recanted her accusations, Juan was released from custody, and the Tucson Police Department closed its investigation. But it was reopened later that month when one of Rebecca's sisters called to request a welfare check, based on suspicions that Rebecca had recently allowed Juan back into the home.<sup>3</sup> DCS also received a hotline report that Juan had returned to the home and, in addition, was informed that Rebecca "had bullied [I.A.] into recanting her accusation of sexual abuse."

¶7 When interviewed, Rebecca denied both allegations, telling the DCS investigator "that [I.A.] had made up the allegations of sexual abuse." Rebecca also denied that she had allowed Juan to return to the home after his release, despite recovered text messages to I.A. telling her that Juan was "staying in the garage" and would "leave on Friday." But later, at a team decision-making meeting, Rebecca admitted allowing Juan to return to the home, stating it "was only for a few days." Still later, when testifying at the dependency hearing, Rebecca told the juvenile court that Juan had spent only one night on her property after his release and had slept in the garage. When interviewed by police and when testifying at the dependency hearing, Rebecca consistently denied that she had asked I.A. to recant her accusations against Juan. But the court found that recordings of her telephone calls with Juan while he was incarcerated, as well as some text messages she exchanged with I.A., supported I.A.'s report that Rebecca had persuaded her to recant her allegations.<sup>4</sup> In particular, the court found those telephone conversations to be "damning evidence of [Rebecca's] failure to protect her children."

¶8 Rebecca and the children maintain the juvenile court abused its discretion in finding the children dependent because "the issue that led

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<sup>3</sup>According to a DCS report, I.A. feared for her safety and had left the day after Juan returned and was staying with a friend.

<sup>4</sup>For example, in one of the telephone calls, Juan told Rebecca she needed to speak to I.A. and "make this right," because "he couldn't go to prison for several years," and "in at least one conversation, Rebecca stated that she had spoken to [I.A.] and that she was going to speak to the detectives."

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to the initial removal of the [children] had been mitigated by the time of the contested dependency hearing.” We cannot agree.

¶9 By the time of the final dependency hearing in April 2018, Rebecca had just begun family therapy with I.A., having participated in a single session, and had attended “eight or nine” of fourteen required sessions of a non-offending parent group. The juvenile court acknowledged the testimony of service providers about progress Rebecca had made and about I.A.’s stated desire to return home to live with Rebecca and her half-siblings. And the court recognized Rebecca’s acknowledgment of her mistake in allowing Juan to return to the home after his release in October 2017, as well as her “confiden[ce] that she will not repeat these old patterns of behavior or poor choices.” But the court also found that “[Rebecca’s] history is a confusing tangle especially in regard to her relationship with Juan,” and that she “at best, minimizes her conduct relating to her failure to protect the children.”

¶10 The court reasonably could have relied on the testimony of the ongoing DCS case manager, who characterized dismissal of the dependency as “premature” because Rebecca lacked “the tools to safely parent” the children. She also testified that the children would still be at risk without DCS involvement because Juan, whose whereabouts were unknown, had not participated in any services and could “pop up anytime.” Moreover, the court found incredible Rebecca’s assertions “that she did not attempt to influence her daughter to recant the allegations of sexual abuse.” While Rebecca and the children do not challenge this finding directly, they argue it pertains only to a determination “that she was a risk in the past,” and not at the time of the dependency adjudication. But “we will not hesitate” to affirm a dependency adjudication involving “parents who presently deny that they are responsible for past abuse and neglect[; as] . . . such denial of responsibility supports a finding that their children do not have parents presently willing to or capable of exercising proper and effective parental care and control.” *Pima Cty. Juv. No. 96290*, 162 Ariz. at 604.

¶11 Sufficient evidence supports the juvenile court’s adjudication of dependency. Rebecca and the children essentially ask that we reweigh the evidence on appeal, which we will not do. *See In re Pima Cty. Juv. Action No. 118537*, 185 Ariz. 77, 79 (App. 1994). Accordingly, we affirm the court’s adjudication orders.